



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120417412-2412-01]

RIN 0648-BB90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish  
Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final temporary rule; request for comments.

SUMMARY: This final temporary rule, issued pursuant to NMFS' authority to issue interim rules under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implements interim measures to reduce overfishing of gray triggerfish in the Gulf of Mexico (Gulf). This rule reduces the gray triggerfish commercial quota (commercial annual catch target (ACT)), commercial and recreational annual catch limits (ACLs), and recreational ACT. Additionally, this final temporary rule revises the recreational accountability measures (AMs) for gray triggerfish. At its April meeting, the Gulf of

Mexico Fishery Management Council (Council) requested NMFS promulgate interim measures to reduce overfishing of gray triggerfish. The rule will be effective for 180 days, unless superseded by subsequent rulemaking, although NMFS may extend the rule's effectiveness for an additional 186 days pursuant to the Magnuson-Stevens Act. The intended effect of this final temporary rule is to reduce overfishing of the gray triggerfish resource in the Gulf while the Council develops permanent management measures.

DATES: This final temporary rule is effective [insert date of publication in the FEDERAL REGISTER], through November 10, 2012.

Comments may be submitted through [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the final temporary rule identified by "NOAA-NMFS-2012-0085" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:  
<http://www.regulations.gov>. Follow the "Instructions" for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS,  
263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2012-0085" in the search field and click on "search." After you locate the document "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish Management Measures," click the "Submit a Comment" link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the "Commenting" section at <http://www.regulations.gov/#!faqs> or the Help section at <http://www.regulations.gov>.

Electronic copies of documents supporting this proposed rule, which include a draft environmental impact statement and a regulatory flexibility analysis, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727-824-5305 or e-mail: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act provides the legal authority for the promulgation of interim regulations under section 305(c) (16 U.S.C. 1855(c)).

#### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure that fishery

resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks and to minimize bycatch and bycatch mortality to the extent practicable.

#### Status of the Gray Triggerfish Stock

The last Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for gray triggerfish was completed in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was additionally undergoing overfishing. The 2011 update assessment indicated the 2008 gray triggerfish rebuilding plan had not made adequate progress toward ending overfishing and rebuilding the stock as described in the rebuilding plan in Amendment 30A to the FMP. NMFS informed the Council of this determination in a letter

dated March 13, 2012. NMFS also requested that the Council work to end overfishing of gray triggerfish immediately and to revise the gray triggerfish stock rebuilding plan.

The Council has begun developing more permanent measures to end overfishing and rebuild the gray triggerfish stock in Amendment 37 to the FMP. However, these measures will not likely be implemented until the end of the 2012 fishing year or at the beginning of the 2013 fishing year. Therefore, on April 19, 2012, the Council requested that NMFS implement a temporary rule to reduce overfishing of gray triggerfish on an interim basis.

#### Management Measures Contained in this Final Temporary Rule

The Council's Scientific and Statistical Committee (SSC) reviewed the gray triggerfish 2011 SEDAR update assessment. The SSC recommended that the gray triggerfish 2012 and 2013 fishing years acceptable biological catches (ABC) be set at 305,300 lb (138,346 kg), whole weight. Based on this recommendation, the commercial and recreational ACLs and ACTs for the gray triggerfish need to be updated.

According to the National Standard 1 guidelines (74 FR 3178, January 16, 2009), ACLs are defined as the highest level of landings for either a stock or fishing sector that is

acceptable to maintain an adequate stock size and to prevent overfishing. ACTs are targets that provide a buffer, less than the ACL, to account for management uncertainty. ACLs and ACTs may both be implemented as triggers for AMs. AMs are management measures implemented to ensure ACLs are not exceeded or mitigate if ACLs are exceeded. AMs may be implemented to reduce overfishing or prevent overfishing from occurring.

In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC. These allocations are used to set the commercial and recreational sector-specific ACLs. The ABC recommended by the SSC is 305,300 lb (138,482 kg), whole weight. Based on the allocations established in Amendment 30A to the FMP, this rule sets, on a temporary basis, a reduced commercial ACL of 64,100 lb (29,075 kg), whole weight, and a reduced recreational ACL of 241,200 lb (109,406 kg), whole weight.

NMFS applied the ACL/ACT control rule to the sector ACLs to set the sector-specific ACTs. This control rule was developed and utilized in the final rule implementing the Generic Annual Catch Limit Amendment (76 FR 82044, December 29, 2011) so that the Council and NMFS could take into account management uncertainty when assigning ACLs and ACTs. The control rule

specified a buffer between the commercial ACL and commercial ACT of 5 percent, and between the recreational ACL and recreational ACT of 10 percent. Therefore, this rule sets, on a temporary basis, the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), whole weight, and the recreational ACT at 217,100 lb (98,475 kg), whole weight. Currently, there is a commercial gray triggerfish quota in place, which functions as the commercial ACT.

To reduce the risk of overfishing, Amendment 30A to the FMP established gray triggerfish AMs. For the commercial sector, there are currently both in-season and post-season AMs. The in-season AM closes the commercial sector after the commercial quota (commercial ACT) is reached or projected to be reached. Additionally, if the commercial ACL is exceeded despite the quota closure, the post-season AM would reduce the following year's commercial quota (commercial ACT) by the amount of the prior-year's commercial ACL overage.

For the recreational sector, there is currently no in-season AM, but a post-season AM is in effect. For the recreational sector, if the recreational ACL is exceeded, NMFS will reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not



exceed the recreational ACT during the following year.

In 2008, recreational landings exceeded both the recreational ACT and ACL. In 2009, the recreational ACT was exceeded. However, in 2010, recreational landings did not exceed the ACT or ACL. Reduced 2010 recreational landings may be attributable to fishery closures that were implemented that year as a result of the Deepwater Horizon MC252 oil spill. Based on recent trends in recreational landings and anticipated future recreational effort, the Council and NMFS have determined that there is a reasonable probability that the recreational sector will exceed its ACL in future years. The implementation of an in-season AM would reduce this risk. This temporary rule establishes an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached. This in-season AM would provide an additional level of protection to ensure that the recreational ACL is not exceeded and that the risk of overfishing will be reduced.

#### Future Action

NMFS has determined that this temporary final rule is necessary to reduce overfishing of gray triggerfish in the Gulf.

This rule will be effective for not more than 180 days after publication, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule. NMFS and the Council will continue to develop more permanent measures to reduce overfishing of gray triggerfish through Amendment 37 to the FMP.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final temporary rule is necessary to reduce overfishing and to achieve OY for the gray triggerfish component of the reef fish fishery in the Gulf EEZ and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Providing prior notice and the opportunity for public comment would be contrary to the public interest because delaying the implementation of this rule is likely to allow overfishing of

gray triggerfish to continue. Gray triggerfish are currently undergoing overfishing and are overfished, so any delay would undermine the intent of the rule. If this rule is not implemented immediately, NMFS will likely be required to implement more severe reductions in gray triggerfish catch limits, which could have higher socio-economic impacts on Gulf reef fish fishermen. NMFS was not able to implement this rulemaking any sooner because the scientific review of the most recent gray triggerfish stock assessment, upon which this rule is based on, was only recently completed. Any delay in the implementation of these revised catch limits would allow harvest to continue at a level that is not consistent with National Standard 1 of the Magnuson-Stevens Act. Comments submitted on this final temporary rule through the Federal e-Rulemaking Portal: <http://www.regulations.gov> and received by NMFS no later than [insert date 30 days after date of publication in the FEDERAL REGISTER], will be considered during any possible subsequent rulemaking relative to this final temporary rule, such as an extension of this rule.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 9, 2012.

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Samuel D. Rauch III,  
Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.42, paragraph (a)(1)(vi) is suspended and

paragraph (a)(1)(vii) is added to read as follows:

§ 622.42 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vii) Gray triggerfish--60,900 lb (27,624 kg), round weight.

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3. In § 622.49, paragraph (a)(2) is suspended and paragraph (a)(17) is added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) \* \* \*

(17) Gray triggerfish--(i) Commercial sector. If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vii), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACT (commercial

quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(ii) Recreational sector. If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACT, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. In addition, if despite such closure, recreational landings exceed the recreational ACL, the AA will file a notification with the Office of the Federal Register to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACT for that following fishing year. The recreational ACT is 217,100 lb (98,475 kg), round weight. The recreational ACL is 241,200 lb (109,406 kg), round weight.

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[FR Doc. 2012-11663 Filed 05/11/2012 at 8:45 am; Publication Date: 05/14/2012]